

REG-94-007 AMOUNT OF DRUGS POSSESSED; METHOD OF CALCULATING

007.01 In all cases, the purity of the drug shall not be considered in calculating the amount of tax owed. All voluntary payments or assessments shall be made as if the drug were 100% pure.

007.02 When an individual possesses a drug in a form that does not lend itself accurately to measurement based upon weight, dosage unit or volume, the Department shall utilize whatever method of measurement and assessment is reasonable and appropriate in the circumstances.

007.02A In the event an assessee disputes the Department's calculation of the amount of taxable drugs in such a circumstance, the assessee may arrange with a court, at his or her own expense, to have the drugs weighed, sorted, cleaned, sifted or otherwise reevaluated, when said drugs have not been previously destroyed. The Department must receive notice of any hearing scheduled on an application to have drug quantities reevaluated and must also be notified of the time and place of any scheduled reevaluation testing.

007.02A(1) If provided with new information as a result of a reevaluation, the Department shall not be obligated to increase or decrease its assessment if it determines the reevaluation method was flawed.

007.02A(2) In the event a reevaluation is conducted without prior approval of the reevaluation method from the Department of Revenue, the Department need not alter its assessment based upon the reevaluation results but may consider the results should it determine an increase or decrease in the amount of the assessment is appropriate.

007.02A(3) The Department shall not unreasonably withhold approval of a reevaluation method, and the likelihood that a reevaluation would result in a decrease in the amount of an assessment shall not alone be cause for withholding approval of a reevaluation method.

007.02A(4) Nothing in these regulations shall be interpreted as giving an assessee the right to have drug weight or measurements reevaluated without an order of a court.

007.03 In the case of unmanicured marijuana, the Department shall not consider the weight of any attached dirt or part of the stalk in calculating the weight of the taxable marijuana unless otherwise provided by the Legislature.

007.03A For purposes of assessment, the Department shall rely upon the exact weight of the confiscated marijuana when available.

007.03B For purposes of assessment, if the exact weight of the marijuana is unavailable, the Department shall estimate the weight of the marijuana to equal one pound of marijuana per plant.

007.03B(1) For the purposes of estimating the total number of plants in a field, the Department may use any method of estimation reasonably calculated to arrive at a close approximation of the actual number. These methods may include averaging the actual number of plants in a small section and multiplying by the number of total square feet in the field or utilizing an accepted scientific determination, when such is available, of the number of marijuana plants that a given plot of land can sustain.

007.03B(1)(a) The determination of which method of estimating the number of plants in a field shall be

the Department's, and nothing in these regulations shall be construed to prefer one reasonable method over another.

007.03B(1)(b) If an assessee disputes the Department's estimate of the number of plants in a field and the field has not been destroyed, the assessee may arrange with a court, at his or her own expense, to count the actual number of plants in the field. Any count undertaken pursuant to this section must be conducted in the presence of a law enforcement agent, who must certify the tally with his or her signature and forward it to the Department.

007.03B(1)(c) The Department shall increase or decrease its estimate of the number of plants according to the actual number of plants counted, as appropriate.

007.03B(1)(d) Nothing in these regulations shall be interpreted to guarantee an assessee the right to count marijuana plants in a field if those plants have been destroyed pursuant to a lawful order of a court.

007.03C In the event an assessee disputes the Department's calculation of the amount of taxable marijuana confiscated and the marijuana in question is still available for weighing, the assessee may arrange with a court to have the marijuana manicured and weighed at his or her own expense. Any weighing of the marijuana must be conducted in the presence of a law enforcement agent with scales certified as being accurate by the State Department of Agriculture.

007.03C(1) If provided with additional information resulting from the manicuring and weighing, the Department shall increase or decrease its estimate of the marijuana weight according to the actual weight, as appropriate.

007.03C(2) Nothing in these regulations shall be interpreted to guarantee an assessee the right to weigh marijuana if that marijuana has been destroyed pursuant to a lawful order of a court.

007.04 For steroids or other liquids sold by volume, tax shall be calculated using a medically-approved dosage unit, when such a dosage unit opinion is available from a qualified health care professional or other qualified authority. When various levels of dosage units are possible, the smallest shall be used.

007.04A When a qualified medical dosage unit opinion is not reasonably available, tax shall be calculated based upon either the street dosage unit as obtained from a qualified law enforcement officer or the weight of the substance. In the event two or more possible tax liability amounts are calculated utilizing reasonable methods, the Department shall assess tax at the greatest amount.

007.04B For liquids sold by volume and not intended for ingestion by human beings, tax shall be calculated based upon a qualified medical dosage unit opinion when available, or upon the minimum street dosage unit when such a measurement can be obtained from law enforcement agents.

007.04C If no street dosage unit estimate is available, tax shall be calculated based upon the weight of the substance or upon any other manner reasonable and appropriate in the circumstances.

007.05 For substances in liquid form which are ordinarily sold either in liquid or subsequently in solid dosage units, tax shall be calculated based upon dosage unit when available or determinable, by weight of the substance, or in any other manner reasonable and appropriate in the circumstances.

007.05A No assessee may challenge the reasonability of a particular method of assessment solely on the basis that another method would result in a lower tax liability.

007.06 In the event an assessee possesses two or more like drugs which are not commonly sold in the same method of measurement (i.e., weight, dosage unit or volume), tax may be calculated utilizing whichever measurement method(s) the Department determines is appropriate, provided the method selected can be applied to each of the like drugs the Department determines should be grouped for assessment purposes. Utilization of a particular method of measuring the substances or excluding a like drug resulting in a higher tax obligation shall not be grounds for contesting the method as inappropriate.

007.06A If an individual possesses like drugs which are not commonly sold in the same method of measurement, but has paid an appropriate amount of tax on the substances as calculated using the most common method of measurement for each of the drugs, the Department shall not apply a different standard of measurement to the drugs which would result in an increase in the amount of tax owed on the drugs.

007.06B In the event an assessee possesses like drugs which are not commonly sold in the same method of measurement in quantities that would ordinarily be insufficient to meet threshold amounts, the department may aggregate the drugs and measure them in a manner appropriate to any one of the drugs even if such a process would result in taxes being owed on all the drugs.

007.07 In the event an individual possesses a drug in quantities that do not meet the minimum threshold amount when computed utilizing the most common method of measurement for that drug, the Department may utilize a method of measurement that is commonly used for a like drug even if that alternate method of measurement would result in tax being owed.

007.07A In determining whether tax is owed on a drug for which sufficient stamps have not been purchased and affixed, the Department may measure the quantity of that drug in the manner most commonly used for the sale of the drug, or it may measure the quantity of the drug in the manner most commonly used for the sale of any like drug, even if utilizing the alternate method of measurement would result in a higher tax being owed.

007.07A(1) In the event an individual has paid a sufficient amount of tax on a drug utilizing a commonly accepted method of measuring the amount of the drug, the Department shall not apply a different standard of measurement to the drugs which would result in an increase in the amount of tax owed on the drugs.

007.07A(2) Crack cocaine may be assessed according to weight or dosage unit.

007.08 For the purpose of determining the total amount of drugs possessed by an individual, the Department shall consider all the marijuana and controlled substances found in the possession or control of an individual in any single twenty-four hour period.

007.08A An individual possessing a container of taxable drugs with a sufficient amount of current drug stamps affixed to it shall not be subject to any additional tax liability for the drugs found in the container. The quantity of marijuana or controlled substance in the container may be added to and measured with the quantity of any other taxable or like drugs found in the individual's possession or control within a single twenty-four hour period for the purpose of determining whether tax, penalty and

interest is owed on the additional drugs.

007.09 Except as otherwise specifically described herein, all situations involving varying, ambiguous or contradicting methods of weighing, measuring or otherwise assessing taxable drugs shall be assessed using the method that results in the greatest tax liability.

(Sections 28-401, 77-4303(2), 77-4307, 77-4310, 77-4310.02(1), 77-4310.02(3), 77-4312, 77-4314, and 77-4316. February 2, 1992.)